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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 KEVIN DOUGLAS DONAHOE,  
12 Booking #11166876,

13 Plaintiff,

14 vs.  
15

16 PEOPLE OF THE STATE OF CALIFORNIA;  
17 LEENA FAWAZ;  
18 SHAWN CHADMAN;  
19 LINDSAY LOHANS;  
20 DR. SHARE, et al.,

Defendants.

Civil No. 11-2808 JLS (PCL)

**ORDER:**

**1) DENYING PLAINTIFF'S MOTIONS  
TO PROCEED *IN FORMA PAUPERIS*  
AND TO COMPEL  
(ECF Nos. 3, 4, 8);**

**AND**

**2) DISMISSING CIVIL ACTION  
AS FRIVOLOUS PURSUANT TO  
28 U.S.C. §§ 1915(e)(2) & 1915A(b)**

21 Plaintiff, a San Diego County pretrial detainee at Vista Detention Facility, and proceeding pro  
22 se, filed this civil rights action pursuant to 42 U.S.C. § 1983 in the Eastern District of California on  
23 November 21, 2011. Plaintiff did not prepay the \$350 filing fee mandated by 28 U.S.C. § 1914(a);  
24 instead, he filed a Motion to Proceed *In Forma Pauperis* ("IFP") pursuant to 28 U.S.C. § 1915(a) (ECF  
25 No. 3), as well as two successive "Motions to Compel Subpoenas" (ECF Nos. 4, 8.)

26 On December 2, 2011, United States Magistrate Judge Kendall J. Newman transferred the matter  
27 to this Court pursuant to 28 U.S.C. § 1406(a), because "most of the named defendants are located, and  
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1 the claim arose, in San Diego County.” *See* Dec. 2, 2011 Order (ECF No. 9) at 2. Judge Kendall did  
 2 not rule on Plaintiff’s pending motions or “the merits of Plaintiff’s complaint.” (*Id.* at 1.)

### 3 **MOTION TO PROCEED IFP**

4 All parties instituting any civil action, suit or proceeding in a district court of the United States,  
 5 except an application for writ of habeas corpus, must pay a filing fee of \$350. *See* 28 U.S.C. § 1914(a).  
 6 An action may proceed despite a party’s failure to pay only if the party is granted leave to proceed in  
 7 forma pauperis (“IFP”) pursuant to 28 U.S.C. § 1915(a). *See Andrews v. Cervantes*, 493 F.3d 1047,  
 8 1051 (9th Cir. 2007); *Rodriguez v. Cook*, 169 F.3d 1176, 1177 (9th Cir. 1999). “Under the PLRA  
 9 [Prison Litigation Reform Act], all prisoners who file IFP civil actions must pay the full amount of the  
 10 filing fee,” regardless of whether the action is ultimately dismissed for any reason. *See Taylor v.*  
 11 *Delatoore*, 281 F.3d 844, 847 (9th Cir. 2002) (citing 28 U.S.C. § 1915(b)(1) & (2)).

12 In order to comply with the PLRA, prisoners seeking leave to proceed IFP must also submit a  
 13 “certified copy of the trust fund account statement (or institutional equivalent) for the prisoner for the  
 14 6-month period immediately preceding the filing of the complaint...” 28 U.S.C. § 1915(a)(2). From  
 15 the certified trust account statement, the Court assesses an initial payment of 20% of (a) the average  
 16 monthly deposits in the account for the past six months, or (b) the average monthly balance in the  
 17 account for the past six months, whichever is greater, unless the prisoner has no assets. *See* 28 U.S.C.  
 18 § 1915(b)(1), (4); *see Taylor*, 281 F.3d at 850. Thereafter, the institution having custody of the prisoner  
 19 must collect subsequent payments, assessed at 20% of the preceding month’s income, in any month in  
 20 which the prisoner’s account exceeds \$10, and forward those payments to the Court until the entire  
 21 filing fee is paid. *See* 28 U.S.C. § 1915(b)(2).

22 While Plaintiff has filed a Motion to Proceed IFP pursuant to 28 U.S.C. § 1915(a), he has not  
 23 attached a certified copy of his institutional trust account statement for the 6-month period immediately  
 24 preceding the filing of his Complaint. *See* 28 U.S.C. § 1915(a)(2); S.D. CAL. CIVLR 3.2. Section  
 25 1915(a)(2) clearly mandates that prisoners “seeking to bring a civil action ...without prepayment of fees  
 26 ... *shall* submit a certified copy of the trust fund account statement (or institutional equivalent) ... for the  
 27 6-month period immediately preceding the filing of the complaint.” 28 U.S.C. § 1915(a)(2) (emphasis  
 28 added).

Without Plaintiff's trust account statement, the Court is simply unable to assess the appropriate amount of the filing fee which is statutorily required to initiate the prosecution of this action. *See* 28 U.S.C. § 1915(b)(1). Accordingly, his Motion to Proceed IFP must be denied.

**SUA SPONTE SCREENING PURSUANT TO 28 U.S.C. §§ 1915(e)(2) AND 1915A**

While the Court would normally grant Plaintiff an opportunity to provide the trust accounting required by 28 U.S.C. § 1915(a)(2), it declines to do so in this case because it finds Plaintiff's Complaint frivolous on its face. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (en banc) (noting that 28 U.S.C. § 1915(e) "not only permits but requires" the court to sua sponte dismiss an IFP complaint that is frivolous, malicious or fails to state a claim); *see also Rhodes v. Robinson*, 621 F.3d 1002, 1004 (9th Cir. 2010) (discussing identical sua sponte screening required by 28 U.S.C. § 1915A(a)(1) & (b) of all civil actions instituted by prisoners seeking redress from a governmental entity, officer or employee).

The Complaint is nearly incomprehensible and it is difficult to even describe what Plaintiff's claims might be. On the one hand, Plaintiff refers to "domestic violence" and "stalking" charges in Vista Superior Court, where he claims to have been "tortured" "simply for wanting to self represent [him]self." (Compl. at 9, 11, 12.) In recompense, Plaintiff seeks "\$70 quadrillion" in damages against the State of California, a public defender, "Lindsay Lohan's lawyer," and several judges and large financial institutions for "withholding evidence that creates a miscarriage of justice." (*Id.* at 3, 6.)

On the other hand, Plaintiff's pleading also includes anti-religious polemic involving "Joseph" and "Mary Christ" and the "Immaculate Conception" and a demand that "The Holy Spirit (not that fake God Jesus Christ)" use the "two spears of destiny" (42 U.S.C. § 1983, 28 U.S.C. §§ 2254 and 2255), to "take treasure away from evil people and give it back to create jobs all over the planet earth." (*Id.* at 5.)

A complaint is frivolous "where it lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Here, there is no question Plaintiff's pleading fails to allege any coherent constitutional violation against any named defendant which is based either in law or in fact. Instead, it contains only anti-religious and conspiratorial allegations that appear "fanciful," "fantastic," or "delusional." *Id.* at 325, 328.

1 Therefore, the Court dismisses the entirety of Plaintiff's Complaint as frivolous pursuant to 28  
2 U.S.C. §§ 1915(e)(2)(B)(i) and 1915A(b)(1).

3 **CONCLUSION AND ORDER**

4 For the reasons set forth above, **IT IS ORDERED** that:

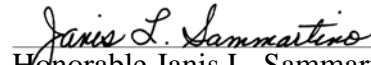
- 5 1. Plaintiff's Motion to Proceed IFP (ECF No. 3) is **DENIED** and the action is **DISMISSED**  
6 without leave to amend as frivolous pursuant to 28 U.S.C. §§ 1915(e)(2) and 1915A(b); and  
7 2. Plaintiff's Motions to Compel (ECF Nos. 4, 8) are **DENIED** as moot.

8 Further, this Court **CERTIFIES** that no IFP appeal from this Order could be taken "in good  
9 faith" pursuant to 28 U.S.C. § 1915(a)(3). *See Coppedge v. United States*, 369 U.S. 438, 445 (1962);  
10 *Gardner v. Pogue*, 558 F.2d 548, 550 (9th Cir. 1977) (indigent appellant is permitted to proceed IFP on  
11 appeal only if appeal would not be frivolous).

12 The Clerk of Court shall close the file.

13 **IT IS SO ORDERED.**

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15 DATED: December 15, 2011

16   
17 Honorable Janis L. Sammartino  
United States District Judge  
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